



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

* * *

NO. 78-850

* * *

GEORGE MORRIS,

Petitioner

V.

STATE OF TEXAS,

Respondent

* * *

RESPONSE TO PETITION FOR CERTIORARI

* * *

OF COUNSEL:

JOHN L. HILL

Attorney General of Texas

FREDERICK C.
SHELTON, JR.
County Attorney

DAVID M. KENDALL
First Assistant Attorney General

F. DUNCAN THOMAS
Assistant County Attorney

P.O. Box 12548, Capitol Station
Austin, Texas 78711
A/C 512 475-5861

Hunt County
P.O. Box 1097
Greenville, Texas 75401
A/C 412 455-1454

Attorneys For Respondent

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* * *

The State of Texas, Respondent, respectfully prays that the Writ of Certiorari be in all things denied and, as grounds, would show:

JURISDICTION

Generally, this Court has jurisdiction under Title 28 U.S.C. §1257(3) in that the validity of a statute of the State of Texas is drawn in question on the ground of its being repugnant to the Constitution of the United States. However, as the argument contained in this brief will show, Petitioner has not brought this case within the criteria of Rule 19(a) of this Court's rules for the consideration of an Application for a Writ of Certiorari. The very question here submitted has been previously determined by this Court in *McGowan v. State of Maryland*, 366 U.S. 420 (1961) and *Two Guys from Harrison-Allentown, Inc. v. McGinley*, 366 U.S. 582 (1961).

NO REASON EXISTS TO GRANT THE WRIT OF CERTIORARI

This is the third effort of Gibson Distributing Company, Inc., or one of its subsidiaries or related companies to have this Court overturn article 9001, Vernon's Texas Civil Statutes. The first effort was the filing by Gibson of a petition for writ of certiorari in No. 76-1430, *Gibson Products, Inc., of Richardson v. The State of Texas*. That petition was denied on June 6, 1977 at 431 U.S. 955. Next, was No. 78-574 styled *Gibson Distributing Company, Inc., et al v. Downtown Development Association of El Paso, Inc.*, in which the petition for writ of certiorari was dismissed for want of jurisdiction on December 4, 1978.

Petitioner George Morris is Manager of Gibson's Discount Store in Greenville, Hunt County, Texas (Appendix 23 to the Petition for Certiorari) and is represented by their attorney.

In addition to these recent cases which have been before the Court, the Texas statute has been before both this Court and the Texas courts in *State v. Sundaco, Inc.*, 445 S.W.2d 606 (Tex.Civ.App.--Eastland 1969, error ref'd n.r.e.) *cert. den'd* for want of substantial federal question, 397 U.S. 591 (1970); and *State v. Spartan's Industries, Inc.*, 447 S.W.2d 407 (Tex. Sup. 1969) *cert. den'd* for want of a substantial federal question, 397 U.S. 590 (1970).

The questions raised are not unlike those raised and determined adversely to Petitioners in *McGowan v. Maryland*, 366 U.S. 420 (1961); *Gallagher v. Crown Kosher Supermarket of Massachusetts, Inc.*, 366 U.S. 620 (1961) and *Two Guys from Harrison-Allentown, Inc. v. McGinley*, 366 U.S. 582 (1961).

CONCLUSION

In 1961 this Court thoroughly examined the validity of state statutes limiting commercial activities on Saturdays or Sundays. Those decisions have been consistently followed and have established a body of law upon which states have acted and relied. There is nothing about Article 9001 of the Texas statutes which would call for a different rule to be adopted at this time. The statute is a reasonable attempt by the Texas Legislature to curtail mercantile activity to such an extent as to promote the health, recreation and welfare of the people of the State in general and of those who are employed in mercantile establishments in particular. The State legislatively has stated that Petitioner's employees should not be required to work seven days a week and that, to promote that end, Gibsons should not sell unessential items on seven consecutive days. This is a reasonable regulation having a relationship to the purpose it serves and does not result in any invidious classification. Certiorari should not be granted.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

OF COUNSEL:

FREDERICK C.
SHELTON, JR.
County Attorney

F. DUNCAN THOMAS
Assistant County Attorney

Hunt County
P.O. Box 1097
Greenville, Texas 75401
A/C 214 455-1454

DAVID M. KENDALL
First Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711
A/C 512 475-5861

Attorneys For Respondent

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Response to Petition for Certiorari has been placed, postage prepaid, in the United States First Class Mail on this the ____ day of December, 1978 addressed to Mr. Joseph A. Pitner, Attorney for Petitioner, 1266 E. Ledbetter Dr., Dallas, TX 75216.

DAVID M. KENDALL